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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EDWARD WILLIAMS, HERBERT
GELMAN, MICHAEL THOMPSON, and
KEITH SENKOWSKI, on behalf of
themselves and other similarly situated
persons,

Plaintiffs,

vs.

BIOTAB NUTRACEUTICALS, Inc., a
corporation, DISH DIRECT, INC.,
TAMARA GIBSON, an individual,
ROBERT WINTER, JR., an individual,
ROBERT WINTER, SR., an individual,
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. BC414808 [consolidated with]
CASE NO. BC415948

CLASS ACTION

**STIPULATION AND AGREEMENT OF
SETTLEMENT**

Original Complaints Filed:
CASE NO. BC414808 - May 29, 2009
CASE NO. BC415948 - June 16, 2009

Hon. Yvette M. Palazuelos

1 It is hereby stipulated and agreed by and between the undersigned Parties, subject to the
2 approval of the Court pursuant to California Rule of Court Rule 3.769, that the settlement of this
3 Action shall be effectuated pursuant to the terms and conditions set forth in this Settlement
4 Agreement.
5

6 **ARTICLE I - PREAMBLE**

7 1. WHEREAS Edward Williams, Herbert Gelman, Michael Thompson, and Keith
8 Senkowski are the named plaintiffs in the above-captioned action entitled *Williams, Gelman,*
9 *Thompson, and Senkowski, individually and on behalf of all others similarly situated, Plaintiffs,*
10 *vs. Biotab Nutraceuticals, Inc., Tamara Gibson, Robert Winter, Jr. and Robert Winter, Sr.,*
11 *Defendants*, Los Angeles County Superior Court, No. BC414808 (consolidated with BC415918)
12 (“the Action”);

13 2. WHEREAS Biotab Nutraceuticals, Inc., Tamara Gibson, Robert Winter, Jr. and
14 Robert Winter, Sr. (collectively “Defendants”) are the defendants that have appeared in the
15 Action;

16 3. WHEREAS a putative class action entitled *Vance Monroe, et al. v. Biotab*
17 *Nutraceuticals, Inc., at al.* was filed on June 3, 2009 in the Southern District of California, Case
18 No. 09cv1207-L (POR) (the “Monroe Action”), alleging causes of action substantially similar to
19 the causes of action alleged in the Action. On January 29, 2010, the Monroe Action was
20 dismissed without prejudice for lack of subject matter jurisdiction. In order to conserve judicial
21 resources and avoid the potential for competing class actions with potentially conflicting rulings,
22 plaintiff Monroe did not and will not challenge dismissal of the federal case for lack of
23 jurisdiction and agreed with Class Counsel that all proceedings would progress in the state court
24 on behalf of all concerned. The Parties have thus agreed that in an effort to fully and finally
25 resolve this Action and the Monroe Action, Vance Monroe will be added as a class representative
26 in the current Action by the filing of a Second Amended Consolidated Complaint.

27 4. WHEREAS the parties agree that within seven (7) days of the Court’s entry of the
28 Preliminary Approval Order, Edward Williams, Herbert Gelman, Michael Thompson, Keith

1 Senkowski and Vance Monroe (collectively, "Plaintiffs" and/or "Class Representatives") will file a
2 Second Amended Consolidated Complaint in exact same form as the draft Second Amended
3 Consolidated Complaint in the form attached hereto as Exhibit A. Defendants shall stipulate to the
4 filing of the Second Amended Consolidated Complaint, solely for purpose of this Settlement and
5 without prejudice to their rights absent this Settlement. Should this Settlement not be finalized for
6 any reason, the Parties shall stipulate to an order striking the Second Amended Consolidated
7 Complaint, and the First Amended Consolidated Complaint shall be the operative pleading in this
8 Action.

9 5. WHEREAS Plaintiffs allege that they relied upon allegedly false and misleading
10 statements contained on the label and in advertisements for all ExtenZe brand of natural male
11 enhancement products, including, the 30-tablet count bottles, 30-tablet count blister pack boxes, 4-
12 tablet count blister packs, the ExtenZe capsules, and any other format in which ExtenZe is or has
13 been sold, other than Women's ExtenZe ("ExtenZe" or the "Product"), regarding ingredients
14 contained in the Product and the ability of the product to, among other things, increase penis size,
15 and that such statements violate California consumer protections laws;

16 6. WHEREAS Plaintiffs seek to recover monetary and equitable remedies on behalf
17 of themselves and a nationwide class of similarly situated persons, which class was certified for
18 nationwide, collective treatment by Order dated February 5, 2010;

19 7. WHEREAS the Parties have engaged in written discovery, produced documents,
20 and taken depositions of witnesses, and have had a full and fair opportunity to evaluate the
21 strengths and weaknesses of their respective positions;

22 8. WHEREAS Defendants deny the allegations of the Action, deny all allegations of
23 wrongdoing and of liability, and deny any causation of harm or damage to the Settlement Class;

24 9. WHEREAS Defendants nevertheless have concluded that, in light of the costs,
25 risks and disruption of litigation, this Settlement is appropriate on the terms and conditions set forth
26 herein;

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2. “Biotab” means Biotab Nutraceuticals, Inc.

3. “Biotab-Related Released Parties” means (a) Biotab; (b) Dish Direct, Inc.; (c) Robert Winter, Jr.; (d) Robert Winter, Sr.; (e) Tamara Gibson; (f) Defendants’ counsel; (g) Biotab’s and Dish Direct’s respective past, present, and future direct and indirect owners (including the individual defendants), parents, subsidiaries, and other corporate affiliates; (h) Biotab’s and Dish Direct’s respective successors and predecessors and their past, present, and future direct and indirect owners, parents, subsidiaries, and other corporate affiliates; and (i) for each of the foregoing persons, each of their past, present, or future officers, directors, shareholders, owners, employees, representatives, attorneys, agents, principals, partners, members, administrators, legatees, executors, heirs, estates, predecessors, successors, or assigns.

4. “Defendants’ Counsel” means Finestone & Richter.

5. “Claims Response Deadline” means the deadline for all Settlement Class Members to submit a claim, which shall be fifteen (15) days after the Final Approval Hearing.

6. “Class Counsel” means Wasserman, Comden, Casselman & Esenstein, LLP, Milstein, Adelman & Kreger, LLP, the Law Office of Bruce B. Whitman, Statman, Harris and Eyrich, LLC, and the Newport Trial Group, LLC.

7. “Class-Related Releasing Parties” means all Settlement Class Members.

8. “Class Released Claims” means any and all actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, and/or rights of any nature and description whatsoever, including, without limitation, violations of any state or federal statutes, rules or regulations, or principles of common law, whether liquidated or unliquidated, known or unknown, in law or in equity, whether or not concealed or hidden, that have been asserted in the Action (or could have been alleged and certified as class claims in the Action) with respect to the manufacture, advertising, marketing, distribution, labeling, purchase or sale of ExtenZe during the period from four years preceding the filing of the initial complaint in this action up to and including the date of entry of the Order of Preliminary Approval, and as extended in Article III, paragraph 4 of this Agreement. The Class Released Claims do not include, and

1 members of the Settlement Class expressly reserve claims and causes of action for personal
2 injury. For the avoidance of doubt, the Biotab-Related Released Parties absolutely and
3 unconditionally agree that: (1) any person participating in the Settlement as a Settlement Class
4 Member has not released any right to pursue in a separate litigation any claim or cause of action
5 for personal injury; (2) the release of Class Released Claims may not be interpreted as a bar to
6 any separate litigation by a Settlement Class Member against a Biotab-Released Party(ies) for
7 claims and causes of action for personal injury; (3) the Biotab-Related Released Parties will not
8 and may not use the release of Class Released Claims for the purpose of defeating a Settlement
9 Class Member's claim or cause of action for personal injury; and (4) the Biotab-Related Released
10 Parties are barred from, and expressly agree to refrain from, asserting that a separate action for
11 personal injury is barred by the doctrines of res judicata, collateral estoppel, and/or any bar
12 against splitting of claims.

13 9. "Collateral Agent" means Milstein, Adelman & Kreger, LLP ("MAK"), who has
14 been appointed to serve as Collateral Agent by Plaintiffs and Class Counsel as set forth in Article
15 III.6, below.

16 10. "Claims Fund" means a fund consisting of six million dollars (\$6,000,000.00) in cash
17 and six million dollars (\$6,000,000) worth of ExtenZe Racing merchandise. The cash component
18 of the Claims Fund is to be funded by Defendants and deposited into the MAK Client Trust
19 Account as set forth in Article III, below.

20 11. "Court" means the Superior Court of the State of California for the County of Los
21 Angeles.

22 12. "Effective Date" means the first date by which all of the following events shall have
23 occurred: (a) the Court has entered the Preliminary Approval Order; and (b) the Court has
24 entered the Final Approval Order and Judgment.

25 13. "Fee and Cost Application" means that written motion or application to be filed at
26 least 45 days prior to the Final Approval Hearing by which the Class Representatives and/or Class
27 Counsel request that the Court award attorneys' fees, costs, expenses and incentive awards.
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1 14. "Final" means that the Final Approval Order and Judgment has been entered on the
2 docket in the Action. The pendency of the Fee and Cost Application shall not in any way delay
3 or preclude the Final Approval Order and Judgment from becoming Final.

4 15. "Final Approval Hearing" means the hearing scheduled to take place at least 90
5 (ninety) days after the date of entry of the Preliminary Approval Order at which the Court shall:
6 (a) determine whether to grant final approval to this Settlement Agreement and to certify the
7 Settlement Class; (b) consider any timely objections to this Settlement and all responses thereto;
8 and (c) rule on the Fee and Cost Application.

9 16. "Final Approval Order and Judgment" means the order in which the Court grants
10 final approval of this Settlement Agreement and authorizes the entry of a final judgment and
11 dismissal of the Action with prejudice.

12 17. "Notice" shall mean Publication Notice.

13 18. "Participating Claimant" means a Member of the Settlement Class who submits a
14 Qualifying Settlement Claim Form in response to the Notice.

15 19. "Parties" means the Class Representatives and Defendants.

16 20. "Person" means any natural person, firm, corporation, unincorporated association,
17 partnership, or other form of legal entity or government body, including its agents and
18 representatives.

19 21. "Preliminary Approval Order" means the order in which the Court grants its
20 preliminary approval to this Settlement Agreement and preliminarily certifies the Settlement
21 Class, authorizes dissemination of Notice to the Settlement Class, and appoints the Settlement
22 Administrator.

23 22. "Publication Notice" means the long-form and television short-form notices,
24 substantially in the form of Exhibits B and C attached hereto. The long-form Publication Notice
25 will be published on the Internet and the short-form Publication Notice will be made in the form
26 of television commercials as set forth in the Preliminary Approval Order, pursuant to California
27 Rule of Court 3.771(b).
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1 1. Claims Fund

2 The six million dollar (\$6,000,000) cash component of the Claims Fund shall be funded as
3 follows: (i) within 14 days of the date of entry of the Preliminary Approval Order, Defendants
4 shall deposit one million, five hundred thousand dollars (\$1,500,000) into the MAK Client Trust
5 Account, (ii) within 14 days of the date of the entry of the Final Approval Order and Judgment,
6 Defendants shall deposit an additional one million dollars (\$1,000,000) into the MAK Client
7 Trust Account, and (iii) the remaining three million five hundred thousand dollars (\$3,500,000) of
8 cash will be deposited into the MAK Client Trust Account in payments of \$145,833.33 per
9 month, payable on or before the first day of each month, for 24 months commencing 6 months
10 after the Effective Date. MAK shall be responsible for transferring funds to the Settlement
11 Administrator to pay class member claims for refunds, incentive awards, and any other funds
12 required by the Settlement Administrator for Notice costs and costs of administration. MAK shall
13 be responsible for distributing attorneys' fees and attorneys' costs, pursuant to the Court's award
14 of fees and costs, and shall not transfer any amounts for attorneys' fees and attorneys' costs to the
15 Settlement Administrator.

16 Distribution of the six million dollar (\$6,000,000) product component of the Claims Fund
17 shall be made by Biotab as follows: (i) within 75 days after the Effective Date, Biotab shall
18 commence distributing an aggregate total of at least three million (\$3,000,000) worth of ExtenZe
19 Racing Merchandise to those class members who elect to receive ExtenZe Racing Merchandise as
20 their compensation under this settlement; and (ii) within six (6) months after the Effective Date,
21 Biotab shall commence distributing at least an additional aggregate total of three million
22 (\$3,000,000) worth of ExtenZe Racing Merchandise to those class members who elect to receive
23 ExtenZe Racing Merchandise as their compensation under this settlement. The distribution of the
24 product component of the Claims Fund to class members will be made by Defendants as set forth
25 herein.

26 2. Distribution of the Claims Fund

27 The Aggregate Fees, Costs, and Expenses shall be paid from the cash component of the
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1 Claims Fund consistent with the provisions of Article VI of this Settlement Agreement. The cash
2 component of the Claims Fund shall also be available for the payment of all applicable taxes on
3 earnings from or otherwise in respect of the Settlement Fund, and any such tax payments shall be
4 paid when due and may be made prior to the Effective Date if required by law. The remainder of
5 the Claims Fund shall be distributed as set forth herein.

6 3. Settlement Class Member Claims

7 a. The Claims Fund, net of all Aggregate Fees, Costs and Expenses, shall be
8 available to pay Valid Claims submitted by Settlement Class Members. Settlement Class
9 Members who make a Valid Claim will be entitled to, at the Settlement Class Member's election,
10 either a cash refund or a retail package of ExtenZe Racing merchandise as set forth herein.

11 Specifically, Settlement Class Members may choose either a cash refund as set forth
12 below **OR** one of the following retail packages:

13 (1) "ExtenZe Men's Retail Package," consisting of the following merchandise,
14 which is the same as, or substantially similar to, the photographs attached hereto as
15 Exhibit D, and available at www.extenzeracing.com:

16 (a) an official ExtenZe Racing baseball cap, which Biotab offers for sale on
17 the Extenze Racing website for \$19.99;

18 (b) an ExtenZe racing clock, which Biotab offers for sale on the Extenze
19 Racing website for \$40.00;

20 (c) an ExtenZe Men's Hoodie, which Biotab offers for sale on the Extenze
21 Racing website for \$29.99;

22 (d) a "Grunge" T-shirt, which Biotab offers for sale on the Extenze Racing
23 website for \$19.99;

24 (e) a "We Never Finish First" long sleeve T-shirt, which Biotab offers for
25 sale on the Extenze Racing website for \$19.99; and

26 (f) a "Die Hard Race Fan" T-shirt, which Biotab offers for sale on the
27 Extenze Racing website for \$19.99; **or**

1 (2) an “ExtenZe His and Hers Retail Package,” consisting of the following
2 merchandise, which is the same as, or substantially similar to, the photographs
3 attached hereto as Exhibit E, and available at www.extenzeracing.com:
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5 (a) a men’s ExtenZe Racing baseball cap, which Biotab offers for sale on
6 the Extenze Racing website for \$19.99;

7 (b) a women’s ExtenZe Racing baseball cap, which Biotab offers for sale
8 on the Extenze Racing website for \$19.99;

9 (c) an ExtenZe racing clock, which Biotab offers for sale on the Extenze
10 Racing website for \$40.00;

11 (d) a women’s backpack, which Biotab offers for sale on the Extenze
12 Racing website for \$16.99;

13 (e) a men’s “We Never Finish First” long sleeve T-shirt, which Biotab
14 offers for sale on the Extenze Racing website for \$19.99;

15 (f) an ExtenZe Men’s Hoodie, which Biotab offers for sale on the Extenze
16 Racing website for \$29.99; and

17 (g) an ExtenZe Women’s “Racer-Chaser” Hoodie, which Biotab offers for
18 sale on the Extenze Racing website for \$29.99.

19 Based on the amount Biotab offers the items above for sale on the Extenze Racing website, the
20 packages have a value of \$149.95 and \$176.94, respectively. Class Members who select a retail
21 package will be able to select sizes for all apparel as part of the claims process.

22 Instead of a retail package, Class Members may choose a reimbursement of \$1.50 for each
23 4-count blister pack of ExtenZe **and** \$7.50 for each 30-count+ package of ExtenZe tablets and/or
24 capsules or other package of ExtenZe purchased for personal consumption and not for re-sale
25 during the Class Period, upon submission of proof of purchase (*i.e.*, a copy of the original sales
26 receipt that identifies the product and shows the amount paid and date of purchase), *or* if no proof
27 of purchase is available, Settlement Class Members may submit a Settlement Claim Form for a
28 maximum of 3 packages total of ExtenZe if accompanied by an affirmation that such products

1 were purchased, along with other requested information relating to the purchase of the product,
2 that are sufficient to satisfy the reasonable requests of the Settlement Administrator for the
3 purpose of determining whether the Class member has made a Valid Claim, such as where the
4 purchases took place and the approximate dates of purchase.

5 b. If the aggregate cash value of Valid Claims submitted by Settlement Class
6 Members exceeds the amount remaining in the Claims Fund after payment of all Aggregate Fees,
7 Costs, and Expenses, then the amount of reimbursement per package will be adjusted downward
8 on a per-package basis in order to proportionately allocate the available Claims Fund amongst the
9 Valid Claims for cash compensation. If the aggregate cash value of Valid Claims submitted by
10 Settlement Class Members is less than the amount remaining in the Claims Fund after payment of
11 all Aggregate Fees, Costs, and Expenses, then the remaining funds in the Claims Fund shall be
12 distributed *cy pres* to the Prostate Cancer Foundation, www.pcf.org.

13 If the aggregate value of Valid Claims submitted by Settlement Class Members for a retail
14 package exceeds \$6 million dollars, then the number of items in each retail package will be
15 adjusted downward *pro rata* on a per-package basis in order to proportionately allocate the
16 available Claims Fund amongst the Valid Claims for compensation in the form of a retail
17 package. If the aggregate value of Valid Claims submitted by Settlement Class Members for a
18 retail package is less than \$6 million dollars, then the remaining value of ExtenZe Racing
19 merchandise shall be distributed *cy pres* to a charity to be approved by the Court. The value of the
20 ExtenZe Racing merchandise, for purposes of this agreement, shall be based on the retail value of
21 the merchandise as set forth above in section 3a.

22 c. Settlement Class Members will be able to obtain Settlement Claim Forms,
23 substantially similar to the Settlement Claim Form attached hereto as Exhibit H, by calling the
24 toll-free number established for purposes of administering this Agreement, by requesting one by
25 mail at the address established by the Settlement Administrator, or by downloading the form from
26 the Internet website, www.extenzesettlement.com, established by the Settlement Administrator.
27 The claim form shall include instructions for the submission process. Settlement Class Members
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1 may submit claim forms online or by mail to the Settlement Administrator at the address
2 provided.

3 d. If a Qualifying Settlement Claim Form is not actually received by the Settlement
4 Administrator from a Settlement Class Member with a postmark on or before the Claims
5 Response Deadline, then that Class Member will be deemed to have forever waived his or her
6 right to be a Participating Claimant and to receive payment under this Settlement. As long as
7 they do not properly submit Opt Outs, Class Members who do not become Participating
8 Claimants shall be deemed Members of the Settlement Class and shall be subject to the Judgment.
9 Only Participating Claimants shall be entitled to payment pursuant to the Judgment.

10 e. Distribution of Settlement Class Member Claims for cash shall commence within 7
11 days of the latest of: (i) the date of final affirmance on any appeal of the Final Approval Order
12 and Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the
13 Final Approval Order and Judgment; or (iii) if no appeal is filed, the expiration date of the time
14 for the filing or noticing of any form of appeal from the Final Approval Order and Judgment.

15 f. Distribution of Settlement Class Member Claims for a retail package shall
16 commence within 60 days of the latest of: (i) the date of final affirmance on any appeal of the
17 Final Approval Order and Judgment; (ii) the date of final dismissal with prejudice of the last
18 pending appeal from the Final Approval Order and Judgment; or (iii) if no appeal is filed, the
19 expiration date of the time for the filing or noticing of any form of appeal from the Final
20 Approval Order and Judgment. The Settlement Administrator shall provide Biotab with the
21 claims information received for a retail package no later than 30 days after the Effective Date.

22 Biotab shall distribute the ExtenZe Racing merchandise to fill all claims for compensation
23 in the form of a retail package by mail and shall notify Class Counsel in writing when all such
24 merchandise has been distributed, including an accounting of any and all undeliverable addresses.
25 Biotab shall make a diligent effort to complete distribution of such merchandise within 9 months
26 of the date of commencement. If for any reason Biotab becomes unable to complete this
27 distribution within 9 months, Defense Counsel will notify Class Counsel in writing and the
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1 Parties will agree on a mutually acceptable alternative schedule depending on the circumstances.

2 4. Equitable Relief and Future Conduct by Defendants

3 Defendants agree not to make any of the statements set forth below in product labeling,
4 advertising or promotional materials, unless they have “competent and reliable scientific
5 evidence,” as defined by the Federal Trade Commission (FTC), to substantiate such statement or
6 statements. The parties acknowledge and agree that the FTC defines “competent and reliable
7 scientific evidence,” as “tests, analyses, research, studies, or other evidence based on the expertise
8 of professionals in the relevant area, that have been conducted and evaluated in an objective
9 manner by persons qualified to do so, using procedures generally accepted in the profession to
10 yield accurate and reliable results.” *See, e.g., In re Goen Techs Corp.*, FTC Docket No. C-4185,
11 2007 WL 643078 (Feb. 8, 2007).

12 Specifically, unless they have “competent and reliable scientific evidence,” Defendants
13 agree to (1) cease making “clinically tested” claims on all newly printed packaging; (2) remove
14 all “Get Bigger, Get Wider” claims from their advertising; (3) remove “Increase Your Size” from
15 the ExtenZe tablets box; (4) remove “ExtenZe is designed to do one main thing: Increase the size
16 of your penis” from all advertisements; (5) remove the terms “ambesium labridol” and “aunctus
17 philtrum” from the ExtenZe packaging and any advertisements regarding ExtenZe; (6) remove
18 from all ExtenZe advertising the representation that “the same type of research that created
19 miracle drugs like Viagra has now created [ExtenZe]”; (7) cease making the claim that ExtenZe is
20 “the #1 penis growth compound worldwide” in any ExtenZe advertising; (8) cease making the
21 claim that “ExtenZe is a revolutionary medically designed male sexual enhancement supplement
22 that can increase the size of your penis in both length and girth” on any ExtenZe packaging or in
23 any ExtenZe advertising; (9) cease making the claim in ExtenZe advertising that “Being larger is
24 not impossible and it doesn't require surgery, prescriptions, gadgets or exercises. All it takes is
25 taking a simple tablet”; (10) cease making the claim in any ExtenZe advertising that “ExtenZe can
26 make you up to 25% larger”; (11) with respect to any claim in ExtenZe internet advertising that
27 ExtenZe affects any structure and/or function of the body, describe in the internet advertisement
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1 the role of each nutrient or ingredient in ExtenZe in affecting the body structure or function;
2 (12) remove the phrase "maximum strength" from all ExtenZe packaging and advertising, unless
3 the ingredient(s) for which the claim is made are identified and all such ingredients have an
4 established "Reference Daily Intake" or "Daily Reference Value" which is also disclosed; (13)
5 refrain from making any representations on the ExtenZe packaging or in ExtenZe advertising
6 about the efficacy, or safety of the product without scientific substantiation for the claim; and (14)
7 cease making claims that Extenze is "100% safe and effective".

8 Defendants shall be permitted a transition period of up to one (1) year from the Effective
9 Date in which to complete the implementation of the specific equitable relief required by this
10 Agreement.

11 Further, Defendants agree that if they conclude a scientific double-blind study of ExtenZe
12 to test the legitimacy of various claims regarding the effects of ExtenZe, Class Counsel will be
13 provided a copy of any such study within 30 days of completion of the study.

14 5. Representation by Defendants as to Financial Condition

15 Defendants represent that in advance of the June 7, 2010 mediation they provided the
16 Class Representatives and Class Counsel with accurate and truthful information concerning
17 Biotab's financial condition, and reasonably based estimates of the net worth of the Individual
18 Defendants. Defendants further represent that their financial condition is poor and that, as such,
19 this Settlement is a reflection of Defendants' ability to pay should a judgment be entered for the
20 full amount of Plaintiffs' claims. The Class Representatives and Class Counsel specifically relied
21 on the financial documents and information provided by Defendants in agreeing to this
22 Settlement, recognizing that the prospects of Defendants' ability to pay any Judgment in favor of
23 the Class may get worse over time

24 Defendants also represent that the Defendants believe that Biotab will have sufficient
25 revenues and assets to discharge Biotab's obligations under this Settlement Agreement, including
26 but not limited to, making the payments set forth in Article III.1 of the Settlement Agreement and
27 providing merchandise as set forth in Article III.3 of the Settlement Agreement. Defendants
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1 understand and acknowledge that this representation regarding their ability to comply with the
2 terms of this Settlement Agreement was also a substantial motivating factor in the Class
3 Representatives' and Class Counsel's agreement to enter into this Settlement Agreement. The
4 financial information provided to Class Counsel consists of (1) itemized sales data for Extenze
5 since 2005; (2) Biotab's Balance Sheet as of December 31, 2009; (3) Biotab's Profit and Loss
6 Statements as of December 31, 2009; (4) Biotab's Vendor Balance Summary as of December 31,
7 2009; (5) Biotab's Balance Sheet as of May 31, 2010; (6) Biotab's Profit and Loss Statements for
8 January through May of 2010; (7) Biotab's Vendor Balance Summary as of May 31, 2010; (8)
9 Biotab's May 2010 bank statement; (9) the Personal Financial Statement of Robert Winter, Sr.;
10 (10) the Personal Financial Statement of Robert Winter, Jr.; and (11) the Personal Financial
11 Statement of Tamara Gibson. True and correct copies of this financial information that was
12 provided to Class Counsel will be filed under seal by Defendants on or before October 7, 2010.

13 6. Appointment of the Collateral Agent

14 Plaintiffs and Class Counsel hereby appoint MAK as the Collateral Agent (and the
15 Collateral Agent hereby accepts such appointment) to take any action, including, without
16 limitation, the registration of any Collateral, as defined in the General Security Agreement and
17 the Trademarks Security Agreement to be executed contemporaneously with this Settlement
18 Agreement and in the form attached hereto as Exhibits F and G, respectively (hereinafter referred
19 to as the "General Security Agreement" and the "Trademarks Security Agreement," respectively)
20 (collectively, the "Security Agreements"), in the name of the Collateral Agent or its nominees
21 prior to or during the continuance of an Event of Default (as defined in the Security Agreements),
22 the exercise of voting rights, if any, upon the occurrence and during the continuance of an Event
23 of Default, the application of any cash collateral received by the Collateral Agent to the payment
24 of the Obligations (as defined in the Security Agreements), the making of any demand under the
25 Security Agreements, the exercise of any remedies given to the Collateral Agent pursuant to the
26 Security Agreements, and the exercise of any authority pursuant to the appointment of the
27 Collateral Agent as an attorney-in-fact pursuant to the Security Agreements that the Collateral
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1 Agent deems necessary or proper for the administration of the Collateral pursuant to the Security
2 Agreements. Upon disposition of the Collateral in accordance with the Security Agreements, the
3 Collateral Agent shall promptly distribute any cash or Collateral, or the proceeds from the sale or
4 disposition thereof, in accordance with the terms of the Security Agreements and this Settlement
5 Agreement.

6 7. Biotab's Grant of Security Interest

7 To secure its complete and timely payment and performance of all of Defendants'
8 financial obligations under the Security Agreements and this Settlement Agreement, including
9 Defendant's obligation to distribute the retail packages as set forth above, Biotab grants to
10 Collateral Agent a security interest in and lien on all of Biotab's business assets, including but not
11 limited to its accounts, inventory, equipment, general intangibles, instruments, documents,
12 investment property, tradenames, trademarks, and the products and proceeds thereof, pursuant to
13 the Security Agreements between Biotab and Collateral Agent and UCC-1 financing statements
14 (in the form as attached hereto as Exhibits F and G to be filed by the Collateral Agent). Collateral
15 Agent may file the Trademarks Security Agreement with the United State Patent and Trademark
16 Office to perfect its security interest in Biotab's intellectual property.

17 **ARTICLE IV – NOTICE AND REQUESTS FOR EXCLUSION**

18 1. Publication Notice

19 Publication Notice to the Settlement Class shall be made by internet publication and on
20 television, as provided in the forms approved by the Court in the Preliminary Approval Order and
21 substantially similar to the forms attached hereto as Exhibits B and C. The long-form Publication
22 Notice will be mailed by U.S. Mail or e-mailed to the class members for whom Defendants have
23 provided complete last-known contact information. Additionally, the long-form notice will be
24 published on the Internet at the settlement website; www.extenzesettlement.com. Television
25 commercials will be aired at least twenty times on cable television channels, and will feature the
26 script attached hereto as Exhibit C, with a voiceover reader. Banner ads substantially in the form
27 attached hereto as Exhibit I to the Settlement Agreement will appear on Internet sites with links to
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1 the settlement website. A press release, substantially in the form attached hereto as Exhibit J to
2 the Settlement Agreement will be issued over PR Newswire's U.S.1 and Hispanic newlines, plus
3 microlisted to men's interest journals and on blogs as set forth in Exhibit K. The Publication
4 Notice, including television commercials shall be published promptly after entry of the
5 Preliminary Approval Order on dates to be agreed upon by the Parties so as to provide the best
6 practicable notice to the Settlement Class. Notice by internet posting shall commence no later
7 than 48 hours after entry of the Preliminary Approval Order, and running through the final date
8 Class Members may submit claims to the Settlement Administrator. Defendants also shall post a
9 link on Biotab's websites, located at www.extenze.com and www.4extenze.net notifying the
10 public of the Settlement Agreement. The link shall state "click here for class action settlement
11 information," or substantially similar directions. The link shall provide access to the
12 www.extenzesettlement.com website established by the Settlement Administrator, and shall
13 remain posted on Biotab's websites through the final date Class Members may submit claims to
14 the Settlement Administrator under this Settlement Agreement. The Parties and the Settlement
15 Administrator shall use best efforts to cause the television commercials to begin running within
16 30 days and to conclude within 58 days after the date of entry of the Preliminary Approval Order.
17 The publication of Publication Notice on the internet and television shall be administered by the
18 Settlement Administrator. The cost of publishing the Publication Notice on the internet and on
19 television shall be paid for from the Claims Fund.

20 2. Notice by Internet Posting on Settlement Website and Defendants' Website

21 The long-form of the Publication Notice shall be posted on the Internet at the
22 www.extenzesettlement.com website to be established and maintained by the Settlement
23 Administrator.

24 3. Declarations Of Compliance

25 The Settlement Administrator shall prepare a declaration attesting to compliance with the
26 publication requirements set forth above. Such declaration shall be provided to Class Counsel
27 and Defendants' Counsel no later than 7 (seven) days prior to the deadline by which Plaintiffs
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1 must file their motion for final approval of the settlement.

2 4. Best Notice Practicable

3 The Parties agree, and the Preliminary Approval Order shall state, that compliance with
4 the procedures described in this Article is the best notice practicable under the circumstances and
5 shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action,
6 certification of the class, the terms of the Settlement Agreement, and the Final Approval Hearing,
7 and shall satisfy the requirements of the California Rules of Court, the California Code of Civil
8 Procedure, the Constitution of the State of California, the United States Constitution, and any
9 other applicable law.

10 5. Report On Requests For Exclusion

11 Not later than 10 (ten) days before the Final Approval Hearing, the Settlement
12 Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, and
13 Defendants' Counsel, a report stating the total number of Persons that have submitted timely and
14 valid Requests for Exclusion from the Settlement Class, and the names of such Persons. Such
15 Persons will not be entitled to receive any relief under this Settlement Agreement.

16 6. Inquiries From Settlement Class Members

17 It shall be the responsibility of Class Counsel to establish procedures for receiving and
18 responding to all inquiries from Settlement Class Members with respect to this Settlement.
19 Defendants and Defendants' Counsel shall refer to Class Counsel any inquiries received from
20 Settlement Class Members.

21 **ARTICLE V-- COURT APPROVAL OF SETTLEMENT**

22 1. Preliminary Approval

23 As soon as practicable after the execution of this Settlement Agreement,
24 Class Counsel shall apply for entry of the Preliminary Approval Order and Defendants shall not
25 oppose any such motion or application. The Preliminary Approval Order shall include provisions:
26 (a) confirm the Settlement Class shall consist of the following class, as previously certified by the
27 Court: "All persons who purchased ExtenZe in the United States from May 29, 2005, until
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1 [DATE OF PRELIMINARY APPROVAL ORDER], except for the judge presiding over this
2 matter”; (b) preliminarily approving this Settlement and finding this Settlement sufficiently fair,
3 reasonable and adequate to allow Notice to be disseminated to the Settlement Class; (c) approving
4 the form, content, and manner of the Notice; (d) setting a schedule for proceedings with respect to
5 final approval of this Settlement; (e) providing that, pending entry of a Final Approval Order and
6 Judgment, no Settlement Class Member (either directly, in a representative capacity, or in any
7 other capacity) shall commence or continue any action against Defendants or other Biotab-
8 Related Released Parties asserting any of the Class Released Claims; and (f) staying the Action,
9 other than such proceedings as are related to this Settlement.

10 2. Objections To Settlement

11 Any Settlement Class Member wishing to object to or to oppose the approval of
12 this Settlement and/or the Fee and Cost Application and/or the motion for class representative
13 incentive awards shall file a written objection (with a statement of reasons) with the Court and
14 serve it on the Parties at least 28 (twenty-eight) days before the date of the Final Approval
15 Hearing, and must appear at the Final Approval Hearing, or seek and obtain leave of Court
16 excusing such appearance prior to the Final Approval Hearing. Any Settlement Class Member
17 that fails to both timely file and serve the written objection and appear at the Final Approval
18 Hearing without leave of Court excusing such appearance, shall be foreclosed from making such
19 objection and/or deemed to have waived any objection filed, and shall have no right and/or
20 standing to file an appeal relating to the approval of this Settlement. The objection must contain:

- 21 a. the full name, address and telephone number of the Settlement
22 Class Member;
- 23 b. a written statement of all grounds for the objection accompanied by
24 any legal support for the objection (if any);
- 25 c. copies of any papers, briefs, or other documents upon which the
26 objection is based;
- 27
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- d. a list of all persons who will be called to testify in support of the objection (if any);
- e. a statement of whether the Settlement Class Member intends to appear at the Settlement Hearing; and
- f. the signature of the Settlement Class Member or his/her counsel.

The Class Representatives will file with the Court their briefs in support of final settlement approval and in response to any objections at least 16 (sixteen) Court days before the date of the Final Approval Hearing. Responses by the Parties to any objections may be served by Internet posting on the settlement website, www.extenzesettlement.com, as described above at Article IV. to ensure all Settlement Class Members have easy access to such responses.

3. Final Approval Hearing

The Parties shall request that the Court, on the date set forth in the Preliminary Approval Order, or on such other date that the Court may set, and at least 90-days after entry of the Preliminary Approval Order, conduct a Final Approval Hearing to: (a) determine whether to grant final approval to this Settlement Agreement; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; (c) rule on the Fee and Cost Application, and (d) rule on any applications for incentive awards. At the Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement Agreement and enter a Final Approval Order and Judgment to approve this Settlement, authorize entry of a final judgment, and dismiss the entire Action with prejudice.

4. Disapproval, Cancellation, Termination, Or Nullification Of Settlement

a. Each Party shall have the right to terminate this Settlement Agreement if either (i) the Court denies preliminary approval or final approval to this Settlement Agreement, or (ii) the Final Approval Order and Judgment does not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declining to enter a further order or orders approving settlement on the terms set forth herein. If a Party elects to terminate this Settlement Agreement under this paragraph, that Party must provide written notice to the other

1 Parties' counsel within 21 (twenty-one) days of the occurrence of the condition permitting
2 termination. Such written notice shall be provided by hand delivery or mail to the Parties'
3 counsel.

4 b. In the event one of the Parties elects to terminate the Settlement Agreement,
5 any amounts distributed to Class Counsel as attorneys fees will be returned to Defendants within
6 5 business days of the notice of any such termination. Distribution of any amounts to Settlement
7 Class Members shall not take place until after the Effective Date, and the cash component of the
8 Claims Fund shall be held in the MAK Client Trust Account until the Effective Date. MAK is
9 authorized to pay the claims administration and notice costs prior to the Effective Date, and any
10 costs incurred for this will not be returned if this agreement is terminated. The Parties will revert
11 back to the position they were in prior to this Settlement as set forth below in section 4(d) if this
12 agreement is terminated.

13 c. Defendants shall have the right to terminate this Settlement Agreement if,
14 prior to the date of the Final Approval Order and Judgment, the total number of Persons that have
15 submitted timely and valid Requests for Exclusion from the Settlement Class constitutes greater
16 than 5% of the estimated size of the Settlement Class. If Defendants elect to terminate this
17 Settlement Agreement under this paragraph, Defendants must provide written notice to the other
18 Parties' counsel on or before the date of the Final Approval Order and Judgment. Such written
19 notice shall be provided by hand delivery or mail to the Parties' counsel. Termination of the
20 Settlement Agreement, Defendants shall still bear the costs of notice and administration as set
21 forth below in Article VI.2.

22 d. If this Settlement Agreement is terminated pursuant to its terms, then: (i) this
23 Settlement Agreement shall be rendered null and void; (ii) this Settlement Agreement and all
24 negotiations and proceedings relating hereto shall be of no force or effect, and without prejudice
25 to the rights of the Parties; and (iii) all Parties shall be deemed to have reverted to their respective
26 status in the Action as of the date and time immediately preceding the execution of this
27 Settlement Agreement and, except as otherwise expressly provided, the Parties shall stand in the
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1 same position and shall proceed in all respects as if this Settlement Agreement and any related
2 orders had never been executed, entered into, or filed, except that the Parties shall not seek to
3 recover from one another any costs incurred in connection with this Settlement, including the
4 costs of Notice and Administration as set forth below in Article VI.2

5 **ARTICLE VI – ADMINISTRATIVE EXPENSES, ATTORNEYS’ FEES, COSTS**

6 1. Costs Of Notice

7 All costs of providing the Notice as provided herein, including the costs of publishing the
8 Notice, shall be paid out of the Claims Fund, subject to the terms hereof.

9 2. Costs Of Administering Settlement

10 All costs of administering this Settlement, including all fees of the Settlement
11 Administrator and the costs of generating and mailing any checks to be issued as part of this
12 Settlement, shall be paid out of the Claims Fund. In the event that this Settlement Agreement is
13 terminated pursuant to its terms, Defendants shall bear any costs of notice and administering this
14 Settlement already incurred.

15 3. Attorneys’ Fees And Costs

16 The Class Representatives and/or Class Counsel may make a Fee and Cost Application to
17 be heard at the Final Approval Hearing seeking an award of attorneys’ fees and costs in an
18 amount not to exceed counsel’s lodestar with a three times multiplier. Class Counsel shall file
19 such motion at least 45-days prior to the Final Approval Hearing. Defendants will not oppose or
20 undermine the application or solicit others to do so. Attorneys’ fees and costs consistent with this
21 paragraph that are approved by the Court shall be paid as set forth below out of the Claims Fund
22 on, or as soon as possible after, the Effective Date, but in no event later than 3 days after the
23 Effective Date of the Settlement Agreement. Payments under this provision shall be made to
24 MAK. Class Counsel shall be solely responsible for further distributing any payments made
25 under this provision.

26 The first two cash payments totaling \$2.5 million will be distributed as follows: costs of
27 Notice and Administration will be paid out of the first \$2.5 million paid, and the remainder of
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1 those sums shall be divided equally between class claims for cash refunds and attorneys' fees and
2 attorneys' costs. To the extent class claims as of the date of distribution do not exceed 50% of
3 this amount, the remaining funds may be applied towards the award of attorneys' fees and costs.
4 The remaining monthly installment payments shall be applied first to any additional or remaining
5 costs of notice and administration, and then distributed on a basis of 75% to class claims for
6 refunds and 25% to attorneys' fees and attorneys' costs. Once either the class claims have been
7 paid in full, or the attorneys' fees and attorneys' costs have been paid in full, any remaining
8 monthly installment payments shall be paid 100% to either category yet to be fully paid, and any
9 remainder following full payment of class member claims and attorneys' fees and attorneys' costs
10 shall be distributed *cy pres* subject to the Court's approval and the terms herein.

11 4. Incentive Award

12 The Class Representatives, or Class Counsel on their behalf, may make an application to
13 be heard at the Final Approval Hearing for incentive awards to be paid out of the Claims Fund in
14 an amount not to exceed \$5,000 per individual, except with respect to Thompson in recognition of
15 the extra time he devoted to this action in conjunction with his participation at the mediation, who
16 will seek an amount not to exceed \$10,000. Defendants will not oppose or undermine the
17 application or solicit others to do so. Not later than 15 (fifteen) days after the Effective Date, and
18 only in the event that the Effective Date occurs, the Settlement Administrator shall pay out of the
19 Claims Fund incentive awards as approved by the Court. These payments shall be compensation
20 and consideration for the efforts of the Class Representatives in the Action.

21 5. Effect On Settlement

22 The Parties agree that the rulings of the Court regarding the amount of attorneys' fees or
23 costs and any incentive award, and any claim or dispute relating thereto, will be considered by the
24 Court separately from the remaining matters to be considered at the Final Approval Hearing as
25 provided for in this Settlement Agreement and any determinations in that regard will be embodied
26 in a separate order. Any order or proceedings relating to the amount of attorneys' fees or
27 incentive award, including any appeals from or modifications or reversals of any order related
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1 thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement,
2 affect the releases provided for in the Settlement Agreement, or affect whether the Final Approval
3 Order and Judgment becomes Final as defined herein.

4 **ARTICLE VII– RELEASES UPON EFFECTIVE DATE**

5 1. Binding and Exclusive Nature of Settlement Agreement

6 On the Effective Date, the Parties and each and every Settlement Class Member shall be
7 bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights,
8 and remedies provided hereunder. No other action, demand, suit or other claim may be pursued
9 against the Biotab-Related Released Parties with respect to the Class Released Claims.

10 2. Releases

11 On the Effective Date, the Class-Related Releasing Parties shall be deemed to have, and
12 by operation of this Settlement Agreement shall have, fully, finally and forever released,
13 relinquished and discharged the Biotab-Related Released Parties from any and all of the Class
14 Released Claims.

15 3. Stay And Dismissal Of The Action

16 The Parties agree to request that the Court, in connection with Preliminary Approval, issue
17 an immediate stay of the trial and of all discovery deadlines in the Action.

18 4. Waiver of Unknown Claims

19 On the Effective Date, the Class-Related Releasing Parties shall be deemed to have, and
20 by operation of this Settlement Agreement shall have, with respect to the subject matter of the
21 Class Released Claims, expressly waived the benefits of any statutory provisions or common law
22 rule that provides, in sum or substance, that a general release does not extend to claims which the
23 party does not know or suspect to exist in its favor at the time of executing the release, which if
24 known by it, would have materially affected its settlement with any other party. In particular, but
25 without limitation, the Class-Related Releasing Parties waive the provisions of California Civil
26 Code § 1542 (or any like or similar statute or common law doctrine), and do so understanding the
27 significance of that waiver. Section 1542 provides:
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1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
2 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
3 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
4 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
5 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
6 **HER SETTLEMENT WITH THE DEBTOR.**

7 Neither this paragraph nor any other provision of this Settlement Agreement shall be construed to
8 effectuate a general release of claims. The releases provided for in this Settlement Agreement are
9 limited to the Class Released Claims as defined in Article II.8 above.

10 5. Assumption of Risk

11 In entering into this Settlement Agreement, each of the Parties assumes the risk of any
12 mistake of fact or law. If either Party should later discover that any fact which the Party relied
13 upon in entering this Settlement Agreement is not true, or that the Party's understanding of the
14 facts or law was incorrect, the Party shall not be entitled to modify, reform, or set aside this
15 Settlement Agreement, in whole or in part, by reason thereof. The Parties agree that at the time
16 this Settlement Agreement was executed, there were unsettled issues of law, and the Parties agree
17 to honor this Agreement regardless of developments in the law after execution; specifically, the
18 Class Representatives and Class Counsel recognize and agree that, given these uncertainties in the
19 law, the Class Representatives and Class Counsel are receiving valuable consideration for the
20 settlement of the Action at this time and per the terms of this Agreement. The Parties will
21 advocate for Court approval of this Settlement Agreement.

22 **ARTICLE VIII- LIMITATIONS ON USE OF SETTLEMENT AGREEMENT**

23 1. No Admission

24 Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any
25 of the related negotiations or proceedings constitutes an admission with respect to the merits of
26 the claims alleged in the Complaint, the validity of any claims that could have been asserted by
27 any of the Settlement Class Members in the Complaint, or the liability of Defendants in the
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1 Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the
2 claims alleged in the Action. Neither the acceptance by the Class Representatives of the terms of
3 this Settlement Agreement, nor any of the related negotiations or proceedings constitutes an
4 admission with respect to the merits of the claims alleged in the Action.

5 2. Limitations on Use

6 This Settlement Agreement shall not be used, offered, or received into evidence in the
7 Action for any purpose other than to enforce, to construe, or to finalize the terms of the
8 Settlement Agreement and/or to obtain the preliminary and final approval by the Court of the
9 terms of the Settlement Agreement. Neither this Settlement Agreement nor any of its terms shall
10 be offered or received into evidence in any other action or proceeding.

11 **ARTICLE IX – MISCELLANEOUS PROVISIONS**

12 1. No Assignment

13 Each Party represents, covenants, and warrants that he or it has not directly or indirectly
14 assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of
15 any liability, claim, demand, cause of action, or rights that he or it herein releases.

16 2. Binding On Assigns

17 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
18 and their respective heirs, trustees, executors, successors, and assigns.

19 3. Captions

20 Titles or captions contained herein are inserted as a matter of convenience and for
21 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
22 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
23 recital.

24 4. Class Member Signatures

25 It is agreed that, because the Settlement Class Members are so numerous, it is impractical
26 to have each Settlement Class Member execute this Settlement Agreement. The Notice will
27 advise all Settlement Class Members of the binding nature of the Releases and of the remainder
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1 of this Settlement Agreement, and in the absence of a valid and timely Request for Exclusion,
2 such Notice shall have the same force and effect as if each Settlement Class Member executed
3 this Settlement Agreement.

4 5. Construction

5 The Parties agree that the terms and conditions of this Settlement Agreement are the result
6 of lengthy, intensive arms-length negotiations between the Parties and that this Settlement
7 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
8 any Party, or his or its counsel, participated in the drafting of this Settlement Agreement.

9 6. Counterparts

10 This Settlement Agreement and any amendments hereto may be executed in one or more
11 counterparts, and either Party may execute any such counterpart, each of which when executed
12 and delivered shall be deemed to be an original and both of which counterparts taken together
13 shall constitute but one and the same instrument. A facsimile or pdf signature shall be deemed an
14 original for all purposes.

15 7. Governing Law

16 Construction and interpretation of the Settlement Agreement shall be determined in
17 accordance with the laws of the State of California, without regard to the choice-of-law principles
18 thereof.

19 8. Integration Clause

20 This Settlement Agreement, including the Exhibits referred to herein, which form an
21 integral part hereof, contains the entire understanding of the Parties with respect to the subject
22 matter contained herein. There are no promises, representations, warranties, covenants, or
23 undertakings governing the subject matter of this Settlement Agreement other than those
24 expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior
25 agreements and understandings among the Parties with respect to the settlement of the Action.
26 This Settlement Agreement may not be changed, altered or modified, except in a writing signed
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14. Waiver Of Compliance

Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

15. Settlement Conditioned on Certain Matters

This entire Settlement Agreement is contingent upon the Parties reaching agreement on the contents of the exhibits and ancillary agreements hereto.

16. Retention of Jurisdiction

The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, including but not limited to, any discovery sought from or concerning objectors to this Agreement and the issuance of orders requiring the posting of an appeal bond, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement. Any action to enforce this Agreement shall be commenced and maintained only in the Court.

17. Amendments and Modifications

This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest. No waiver of any provision of this Settlement Agreement or consent to any departure by either Party therefrom shall be effective unless the same shall be in writing, signed by the Parties or their counsel, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No amendment or modification made to this Settlement Agreement shall require any additional notice to the Settlement Class Members, including written or publication notice, unless ordered by the Court. The Class Representatives and Class Counsel agree not to seek such additional notice. The Parties may provide updates on any amendments or

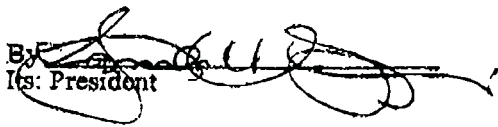
1 modifications made to this Settlement Agreement on the settlement website,
2 www.extenzesettlement.com, as described at Article IV.
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DATED: September 29, 2010

BIOTAB NUTRACEUTICALS, INC.


B. F. Gibson
Its: President

DATED: September 29, 2010


ROBERT WINTER, SR.


DATED: September , 2010


ROBERT WINTER, JR.

DATED: September 29, 2010


TAMARA GIBSON

1 DATED: September __, 2010

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4 EDWARD WILLIAMS, on behalf of
himself and the proposed class

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7 HERBERT GELMAN, on behalf of
8 himself and the proposed class

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11 MICHAEL THOMPSON, on behalf of
12 himself and the proposed class

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17 VANCE MONROE, on behalf of himself
18 and the proposed class

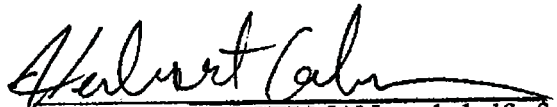
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22 KEITH SENKOWSKI, on behalf of
himself and the proposed class

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DATED: September 27, 2010

EDWARD WILLIAMS, on behalf of
himself and the proposed class



HERBERT GELMAN, on behalf of
himself and the proposed class

MICHAEL THOMPSON, on behalf of
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VANCE MONROE, on behalf of himself
and the proposed class

KEITH SENKOWSKI, on behalf of
himself and the proposed class

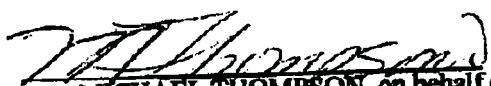
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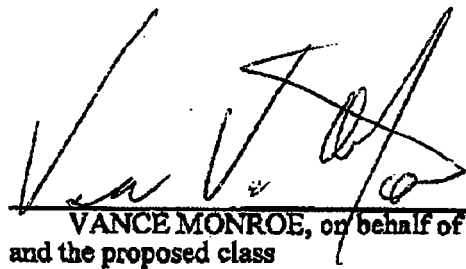
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DATED: September 29, 2010

EDWARD WILLIAMS, on behalf of himself and the proposed class

HERBERT GELMAN, on behalf of himself and the proposed class

MICHAEL THOMPSON, on behalf of himself and the proposed class


VANCE MONROE, on behalf of himself and the proposed class

KEITH SENKOWSKI, on behalf of himself and the proposed class

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DATED: September __, 2010

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himself and the proposed class

VANCE MONROE, on behalf of himself
and the proposed class

Keith Senkowski, 9/27/10

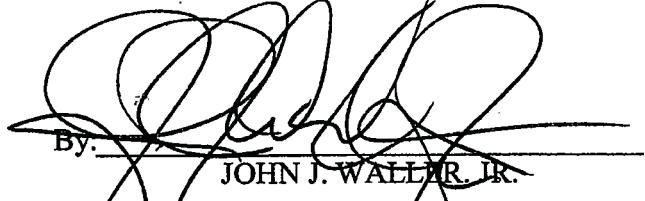
KEITH SENKOWSKI, on behalf of
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DATED: September 30, 2010

FINESTONE & RICHTER


By: _____
JOHN J. WALLER, JR.

Attorneys for Defendants Biotab
Nutraceuticals, Inc., Tamara Gibson, Robert
Winter, Sr. and Robert Winter, Jr.
MILSTEIN, ADELMAN & KREGER, LLP

DATED: September __, 2010

By: _____
GILLIAN L. WADE

Attorneys for Plaintiffs and the Proposed Class
**WASSERMAN, COMDEN, CASSELMAN
& ESENSTEN, L.L.P.**

DATED: September __, 2010

By: _____
MELISSA M. HARNETT
GREGORY B. SCARLETT

Attorneys for Plaintiffs and the Proposed Class
STATMAN, HARRIS & EYRICH, LLC

DATED: September __, 2010

By: _____
JEFFREY P. HARRIS

Attorneys for Plaintiffs and the Proposed Class
LAW OFFICE OF BRUCE WHITMAN

DATED: September __, 2010

By: _____
BRUCE B. WHITMAN

Attorneys for Plaintiffs and the Proposed Class
NEWPORT TRIAL GROUP

DATED: September __, 2010

By: _____
SCOTT J. FERRELL

Attorneys for Plaintiffs and the Proposed Class

1 DATED: September __, 2010

FINESTONE & RICHTER

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By: _____
JOHN J. WALLER. JR.

5

Attorneys for Defendants Biotab
Nutraceuticals, Inc., Tamara Gibson, Robert
Winter, Sr. and Robert Winter, Jr.
MILSTEIN, ADELMAN & KREGER, LLP

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DATED: September 28, 2010

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By: 
GILLIAN L. WADE

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DATED: September __, 2010

Attorneys for Plaintiffs and the Proposed Class
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